

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
FRYEBURG WATER COMPANY
INVESTIGATION INTO QUALITY OF SERVICE
DW 04-020

**STIPULATION BETWEEN THE STAFF OF THE NEW HAMPSHIRE PUBLIC
UTILITIES COMMISSION, THE OFFICE OF CONSUMER ADVOCATE, ROBERT
AND NANCY SWETT, AND STATE OF MAINE PUBLIC ADVOCATE OFFICE**

Fryeburg Water Company (Fryeburg or Company) is a regulated public water utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (Commission). Fryeburg is a multi-jurisdictional franchise with headquarters in Fryeburg, Maine. Fryeburg serves approximately 800 customers, approximately 67 of which are located in East Conway, New Hampshire. The majority of Fryeburg's customers are located in the adjacent town of Fryeburg, Maine. Both the New Hampshire and Maine Public Utilities Commissions have authority over Fryeburg.

I. Background

1. On January 14, 2004, the Commission received a petition from Nancy and Robert Swett, customers of Fryeburg in East Conway. The petition contained signatures from twenty-two customers of Fryeburg and requested the Commission investigate the quality of service provided by Fryeburg to its New Hampshire customers.

2. The Commission has reviewed Fryeburg's water quality issues in the past. In Docket No. DW 00-238, the Commission investigated the adequacy of a 7600 foot unlined cast iron main installed in 1883. This main supplies water to East Conway, NH where petitioners reside. In the final order in that docket, the Commission stated, "We expect...that the Company,

in the ordinary course of sound utility resource planning, will develop contingency plans now to address the likely need to replace the water distribution system dependent on the late 19th century main.” *Fryeburg Water Company*, Order No. 23,854 in Docket No. DW 00-238, 86 NH PUC 831 (2001). The Commission therefore opened Docket No. DW 04-020 to investigate water quality and service issues. Because of the joint jurisdiction over Fryeburg by the state of Maine, the Maine Public Advocate (MPA) petitioned and was granted intervention in this docket. The New Hampshire Office of Consumer Advocate (OCA) informed the Commission that it would be participating in DW 04-020 on behalf of residential ratepayers. Intervention requests by the Swetts and the towns of Conway and Fryeburg were granted as well.

3. The Commission established a procedural schedule which included prefiling of testimony by all parties to the docket. Staff submitted its testimony on August 26, 2004. (Testimony of Douglas W. Brogan, Water Engineer for the Staff, hereafter referred to as “Staff Testimony”).

4. Staff concluded that the 1883 cast iron main is the source of the water quality problems, related to the corrosion of the line. Staff Testimony, p.2, 26-27. Staff reported that despite Fryeburg’s remedial efforts, Fryeburg had not taken any steps to undertake an engineering survey to evaluate the options to address the condition of the line until Staff’s discovery requests in this docket, and when it did so, Fryeburg had excluded the option of replacing the main in question. Staff Testimony p. 8, at 14-17 and 27-31. In spite of this, Fryeburg did agree that the source of the water quality problem being experienced by the East Conway customers must be with the pipe. Staff Testimony p. 8, at 5-8

5. Staff reported that water quality issues and service were of continued concern to Fryeburg’s East Conway customers; that Fryeburg had “repeatedly misrepresented the extent and

nature of the complaints it has received”; and that, “[c]ustomers with legitimate problems no longer see any point in responding to such efforts” as customer surveys. Staff Testimony, p. 3, p. 5 at 19-20 and p.6 at 6-7. Staff characterized Fryeburg as failing to conduct any improvements, other than those done in response to external pressure. Staff outlined several recommendations to provide Fryeburg with direction to address the problems of the main line and the customer service issues uncovered in its investigation. Staff Testimony, pp. 19-22.

6. On September 3, 2004, the OCA filed a Motion to Compel an Engineering Study of Replacing or Relining the Water Main to include information on the prospects of (1) replacing and (2) relining the 1883 water main running from Fryeburg, Maine to East Conway, New Hampshire in addition to the information already provided on the prospects of (3) developing a new well and filtration system in East Conway and (4) developing two new wells in East Conway

7. The Commission issued Order No. 24,373 on September 23, 2004 granting the OCA’s Motion to Compel and establishing two phases for the balance of the proceeding. In the first phase, the Commission will “consider the past actions of the company and measures for remediation of the type urged in Staff testimony.” Order No. 24,373, p. 2. The Order directed the parties and Staff to meet for settlement discussion as scheduled on October 19, 2004 to focus on the issues identified in Phase 1. Phase II issues will be evaluated once Fryeburg completes its engineering studies.

8. The Parties met on October 19, 2004 as directed by the Commission. The Company was not prepared to discuss Staff’s testimony and indicated that it was not willing to agree to any financial incentives at the Settlement Conference.

II. Stipulation

In consideration of the foregoing statements, and the following stipulations, Staff, the Swetts, the OCA and the MPA (Signatories) agree as follows:

1. The Signatories believe that an appropriate incentive is necessary to ensure that Fryeburg moves expeditiously to solve the water quality problems that have plagued the East Conway customers and gave rise to this proceeding. The Signatories believe that only a financial incentive will be effective in this regard. To that end, the Signatories urge the Commission to order Fryeburg to escrow all of the revenues received from its East Conway customers for bills rendered on and after the date of the Commission order approving this Stipulation. The Signatories believe that the annual revenues Fryeburg receives from the East Conway customers total approximately \$14,000.
2. The Signatories urge the Commission to order that the funds be escrowed by the Company's outside counsel, Russell Hilliard, Esq., or by a third party acceptable to the Signatories and the Commission, and be placed in an interest-bearing account. Fryeburg should be ordered by the Commission to file a report monthly with the Commission, with copies to the service list in this proceeding. This report should indicate the opening balance of the escrowed funds for the month, the deposits made, the interest credited, and the closing balance for the month. The reporting should be continued until such time as the Commission orders otherwise.
3. The Signatories believe that the escrowed funds should not at any time be available to Fryeburg for any purposes, including as collateral for loans or as collateral for any other purpose.
4. The Signatories believe that the escrowed funds ultimately should be dedicated to any capital improvements undertaken by Fryeburg for the purpose of solving the water quality problems in East Conway. The Signatories believe that, once the Commission has issued an order relating to Phase II of this proceeding, as contemplated by the Commission in its Order No.

24,373 issued September 23, 2004, such order to presumably direct Fryeburg to make capital improvements to improve service in East Conway, the Commission should provide Fryeburg with authority to devote the escrowed funds toward those improvements.

5. The Signatories to this Stipulation recognize that this proceeding could conclude without the Commission ordering capital improvements for improving water quality for the East Conway customers due to a sale of the Company to a water district, precinct or other municipal entity. In such an event, the Commission should make a determination as to the final disposition of the escrowed funds at the time the Commission considers the sale of the Company and transfer of the East Conway portion of Fryeburg's franchise area consistent with the Commission's authority under RSA 374.

Signed this _____ date of _____, 2004

Suzanne Amidon, for
Staff, NH Public Utilities Commission

F. Anne Ross
Office of Consumer Advocate

William C. Black
Maine Public Advocate

Nancy and Robert Swett
Intervenors

